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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of	)	
BRUWER, Frederick Johannes	)	Attorney Docket No. P.19092/MAJR
Application No.: 09/806,860	)	Examiner: Robert L. Deberadinis
Filed: July 2, 2001	)	Group Art Unit: 2836
For: INTELLIGENT ELECTRICAL SWITCH	)	

COMMUNICATION

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

As set forth in the Amendment and Information Disclosure Statement filed on September 16, 2004, one of the previous issued U.S. patents that is related to the subject application, U.S. Patent No. 6,621,225, has been the subject of a patent infringement litigation in the United States District Court, Northern District of Texas. The litigation has now been settled by virtue of a Settlement Agreement that was entered into by the parties to the litigation on October 29, 2004. A copy of the Settlement Agreement is attached for the Examiner's information.

It should be noted that under the terms of the agreement, the opposing side, LRI, agreed and stipulated that the claims in issue in the '225 patent are not invalid. LRI is also the party that made Applicant aware of the references cited in the Information Disclosure Statement dated September 16, 2004.

Respectively submitted,

By William A. Blake  
William A. Blake  
Reg. No. 30,548

JONES, TULLAR & COOPER, P.C.  
P.O. Box 2266 Eads Station  
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(703) 415-1500  
Dated: December 9, 2004



## SETTLEMENT AGREEMENT

This *Settlement Agreement* ("Agreement") is entered into as of October 29, 2004 (the "Effective Date") between (a) Azoteq PTY, Ltd. ("Azoteq") a South African corporation with a principal place of business located in Paarl, South Africa, on the one hand, and (b) Laughing Rabbit, Inc., an Oregon corporation with a principal place of business located in Blachly, Oregon, and Photonlight.com, Inc., an Oregon corporation with its principal place of business in Eugene, Oregon, (Laughing Rabbit and Photonlight.com collectively referred to as "LRI") on the other hand.

### Definitions

1. The three parties may be referred to below individually as a "Party" and collectively as the "Parties."
2. "Accused Products" means Photon Fusion Products and Photon Micro-Light III Products.
3. "Photon Fusion Products" means products sold by LRI under the trademark "Photon Fusion Headlamp/Flashlight" as well as identical products sold under any other trademark.
4. "Photon Micro-Light III Products" means products sold by LRI under the trademark "Photon Micro-Light III" as well as identical products sold under any other trademark.
5. "Dallas Suit" means the lawsuit numbered and styled: *Azoteq Pty., Ltd. v. Photonlight.com, Inc. and Laughing Rabbit, Inc.*, currently pending in the United States District Court for the Northern District of Texas, Dallas Division, Cause Number 3:03 CV-2830B.

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6. "Affiliates" means, as to any Person, any other Person controlled by, under the control of, or under common control with, such Person. As used in this definition, "control" shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise), provided that, in any event, any Person which owns or holds directly or indirectly 5% or more of the voting securities or 5% or more of the partnership or other equity interests of any other Person (other than as a limited partner of such other Person) will be deemed to control such other Person.

7. "Person" means an individual, corporation, partnership, limited liability company, limited liability partnership, joint venture, trust or unincorporated organization, joint stock company or other similar organization, government or any political subdivision thereof, or any other legal entity.

8. The term "'225 Patent" as used herein shall mean United States Patent No. 6,621,225.

**Whereas, Azoteq is the owner of the '225 Patent which issued on September 16, 2003;**

**Whereas, LRI manufactures and sells several models of flashlights which Azoteq alleges infringe one or more claims of the '225 Patent;**

**Whereas, LRI has alleged that the '225 Patent is invalid and not infringed;**

**Whereas, Azoteq sued LRI for infringement of the '225 Patent in the Dallas Suit and has asserted in the Dallas Suit that the Accused Products infringe the '225 Patent;**

**Whereas, LRI filed a counterclaim against Azoteq seeking a declaratory judgment of invalidity and non-infringement of the '225 Patent in the Dallas Suit; and**

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Whereas, Azoteq and LRI have agreed to settle their differences in accordance with the terms set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and representations contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and incorporating the Definitions and recitals set forth above, the Parties do hereby agree as follows:

1. Terms:

(a) LRI agrees and hereby stipulates that Claims 11, 12, 15, 16, 40-45, and 47-52 are not invalid.

(b) LRI represents and warrants that the Accused Products have been discontinued and that LRI will not order any parts therefor after the Effective Date (and has not ordered any parts therefor after August 1, 2004).

(c) LRI represents and warrants that its current inventory of Photon Fusion Products (whether assembled or in the form of parts on hand from which a completed device may eventually be assembled) is zero. LRI represents and warrants that its current inventory of Photon Micro-Light III Products (whether assembled or in the form of parts on hand from which a completed device may eventually be assembled) is approximately 90,000 units (the "Remaining Inventory").

(d) LRI agrees to immediately stop selling the Photon Fusion Products as well as any advertising, marketing, and/or promotion thereof. LRI agrees to remove all information about the Photon Fusion Products from the photonlight.com website within 30 days of the Effective Date and cease all advertising, marketing, and/or promotion of the Photon Fusion Products as of that time.



(e) Azoteq agrees that LRI may sell (or otherwise distribute) 50,000 units of the Remaining Inventory in the United States and may sell (or otherwise distribute) the Remaining Inventory outside of the United States provided that all such sales must take place within two years of the Effective Date. LRI agrees that it will not sell (or otherwise distribute) more than 50,000 units of the Remaining Inventory in the United States and that all sales (or other distributions) of the Remaining Inventory must be completed within two years of the Effective Date. LRI further agrees that it will not sell (or otherwise distribute) any Photon Micro-Light III Products (a) once their current inventory is exhausted or (b) at any time following the expiration of two years from the Effective Date. No later than 30 days following the expiration of two years from the Effective Date, LRI agrees to destroy any Remaining Inventory that existed as of the expiration of two years from the Effective Date, to remove all information about the Photon Micro-Light III Products from the photonlight.com website, and cease all advertising, marketing, and/or promotion of the Photon Micro-Light III Products

(f) Azoteq agrees that LRI shall have no liability to Azoteq for sales of the Remaining Inventory that are in compliance with the provisions of this Agreement and shall have no liability for prior sales of the Accused Products.

(g) Within five (5) business days of the Effective Date, the Parties will file a joint motion with the Court in the Dallas Suit to dismiss their respective claims in the Dallas Suit with prejudice.

(h) Azoteq, on behalf of itself and its Affiliates, successors, and assigns, hereby releases, acquits, and forever discharges LRI, its Affiliates, officers, directors, employees, agents, predecessors, successors, subsidiaries, and assigns from and against any and all claims, demands, liabilities, causes of action, or damages for (a) infringement (whether direct or indirect)

of the '225 Patent or any foreign equivalent thereof, (b) infringement (whether direct or indirect) of any patent claiming the benefit of the filing date of the '225 Patent or claiming the benefit of the filing date of any ancestor of the '225 Patent or (c) violation of Azoteq's provisional rights under 35 U.S.C. Section 154 (or any other rights, if any) with respect to any currently published patent application claiming the benefit of the filing date of the '225 patent or claiming the benefit of the filing date of any ancestor of the '225 Patent, in each case by LRI occurring prior to the Effective Date.

(i) LRI, on behalf of itself and its Affiliates, successors, and assigns, hereby releases, acquits, and forever discharges Azoteq, its Affiliates, officers, directors, employees, agents, predecessors, successors, subsidiaries, and assigns from and against any and all claims, demands, liabilities, causes of action, damages, or duties concerning the '225 Patent occurring prior to the Effective Date.

2. No License: Nothing herein shall be construed as granting expressly, by implication, or otherwise any license to the '225 Patent or any other patent or patent application owned by Azoteq.

3. Compromise: The Parties wish to resolve the Dallas Suit and avoid the costs and risk associated with continuing the Dallas Suit. This Agreement is intended to be treated as a settlement agreement compromising disputed claims and is not intended to reflect on what a reasonable royalty would be for a license to the '225 Patent.

4. Governing Law: This Agreement will be governed by, construed and enforced in accordance with the law of the State of Texas, without regard to its principles of conflicts of law.

5. Headings: The paragraph headings in this Agreement are for convenience only and are not part of this Agreement.

6. Binding Effect: The terms of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, heirs, and assigns. No Party may assign any of its rights or obligations hereunder without permission of the other parties, which consent shall not be unreasonably withheld.

7. Costs and Expenses: Each Party shall be responsible for its own costs and expenses, including attorneys' fees, incurred by it in connection with this Agreement and the Dallas Suit.

8. Interpretation: No provision of this Agreement will be construed against or interpreted to the disadvantage of any Party by any court or other governmental or judicial authority by reason of such Party having, or being deemed to have, prepared, structured, or dictated such provision.

9. Waiver of Rights: Failure of any Party to enforce any of its respective rights or remedies under this Agreement with respect to any specific act or failure to act will not constitute a waiver of the rights of such Party to enforce such rights and remedies with respect to any other or subsequent act or failure to act.

10. Amendment: Neither this Agreement nor any provision of it may be changed, waived, discharged, or terminated orally. Any amendment to the Agreement must be in writing and signed by the Parties.

11. Conference with Counsel: The Parties confirm and represent that they have reviewed and discussed this Agreement with their respective attorneys, that they have the power, authority and capacity to enter into this Agreement and to incur the obligations provided for herein, that they have read and understand the effect of this Agreement, and that this Agreement has been freely and willingly made by them.



12. No Transfer of Claims: The Parties warrant and represent that they are each fully authorized to execute and enter into this Agreement. The Parties hereby further represent and warrant that before their respective execution of this Agreement they have not conveyed, assigned, pledged, or in any other way transferred all or any portion of the claims, demands, actions, causes of action, suits, costs, losses, damages, expenses, compensation, liabilities, obligations asserted in the Dallas Suit.

13. Entire Agreement: This Agreement constitutes the entire agreement among the Parties with respect to the subject matter of this Agreement and there are no representations, understandings, or agreements relative to this Agreement which are not fully expressed in it.

14. Counterparts: This Agreement may be executed in any number of counterparts, each of which when so executed and delivered via facsimile, certified mail return receipt requested, courier or other reasonable means will be deemed to be an original and all of which counterparts, taken together, will constitute but one and the same agreement.

15. Severability: If any provision or portion of this Agreement is deemed, for any reason, invalid or unenforceable, that provision or portion shall be limited to the extent necessary to render it valid. The Parties also agree that the remaining portion or portions of this Agreement shall be deemed valid, enforceable and carried into effect.

16. Authority. Each of the persons executing this Agreement represents and warrants that he or she has the full power and authority to enter into this Agreement on behalf of the Party hereto for which he or she signs and that there are no other persons or entities whose consent to this Agreement or whose joinder herein is necessary to make the provisions hereof fully effective.





In witness whereof, the Parties have executed this Agreement below.

Azoteq Pty, Ltd.

By: \_\_\_\_\_

Printed Name: FREDERICK J BRUWER

Title CEO

Laughing Rabbit, Inc.

By: \_\_\_\_\_

Printed Name: David Allen

Title President

Photonlight.com, Inc.

By: \_\_\_\_\_

Printed Name: Bryan Avery

Title President